

COMPANY APPLICATION NO.67-0/2003
IN
COMPANY PETITION NO.7/B/1998

Official Liquidator. Applicant.

V/s.

1. Shri Victor Fernandes.

2. Shri Alberto D'Souza. Respondents.

Ms. Amira Razak, Advocate for the Applicant.

Mr. E.P. Lobo, Advocate for respondent No.1.

Mr. A. Salkar, Advocate for respondent No.2.

CORAM : N.N. MHATRE, J.

DATE : JANUARY 23, 2004.

P.C.

This application has been filed by the Official Liquidator for action to be taken against the first and second respondents for having used the company letter-head after an order was passed winding up the company. It appears that the Company Application No.39-0/2001 was filed against the first respondent Victor Fernandes being the principal debtor, for recovery of Rs.2,11,989/- along with interest at the rate of 13 % per annum. This was filed pursuant to the winding up order dated 13.10.1998 of this Court. The Official Liquidator then took charge of the assets and effects

of the company in liquidation. The claim of the applicant was being heard and the evidence was being recorded. After the evidence of the applicant was concluded and the matter was fixed for evidence of the respondents, respondent No.1 made an application on 11.10.2002 to produce certain documents, one of these documents, was a letter of 17.9.2002 addressed by the Bank of Baroda to the Managing Director of the Company which was already in liquidation. The Official Liquidator then called upon the Bank to disclose the circumstances under which the letter was issued. Accordingly the Bank informed the Official Liquidator and annexed letter dated 12.9.2002 written by the respondent No.1 on the letter-head of the company in liquidation and signed by Alberto D'Souza, respondent No.2 as its Managing Director and respondent No.1 as its Director. The Official Liquidator, therefore, preferred an application being Company Application No.55-0 of 2003 before this Court for direction to the respondents Victor Fernandes and Alberto D'Souza to forthwith surrender all the letter-heads of the company in liquidation. The other prayer made was that appropriate orders be passed against the respondent in that application Alberto D'Souza for the contemptuous acts. This application was disposed of on 1.8.2003. The statement made by Victor Fernandes on affidavit that he did not possess any letter-heads was accepted.

As the application was not directed against Alberto D'Souza, although the prayer sought was to take action against Victor Fernandes and Alberto D'Souza, liberty was granted to the applicant Official Liquidator to file appropriate proceedings in respect of the relief claimed in prayer clause (b). Accordingly, the present application is filed.

2. In reply to the application, both Victor Fernandes and Alberto D'Souza have tendered their unconditional apology. Both the respondents have stated that they do not have any documents or assets of the Company in their possession and that the letter that was written to the Bank was not written with malafide intention, but instead was written to bring certain facts on record in the company application. Although a faint attempt has been made on behalf of the respondents to submit that the present application is barred by principles of res judicata, this submission has not been insisted upon.

3. In view of the unconditional apology tendered by both the respondents and the explanation given by them in their respective affidavits which seems plausible, there is no need to take any action against them under Section 454(4) of the Companies Act. The apology tendered is accepted. If the respondents

indulge in any further acts of this nature, stern action will be taken against them. Application is disposed of accordingly

NISHITA MHATRE, J.

ssm.